

**Chesapeake Bay Local Assistance Board
Northern Area Review Committee Meeting
Tuesday, February 14, 2006 - 10:00 a.m.
101 N. 14th St. – James Monroe Building
Richmond, Virginia**

DRAFT MINUTES

Northern Area Review Committee Members Present

Donald W. Davis, Chair
William E. Duncanson

Gregory C. Evans
Walter J. Sheffield

DCR Staff Present

Russell Baxter, Deputy Director
Joan Salvati, Director, Division of Chesapeake Bay Local Assistance
Shawn Smith, Program Analyst
Beth Baldwin, Principal Environmental Planner
V'Lent Lassiter, Senior Environmental Planner
Heather C.A. Mackey, Principal Environmental Planner
Nancy Miller, Senior Environmental Planner
Michael R. Fletcher, Director of Development

Local Government Officials Present

Wade Hugh, Prince William County
Angeline Marsh, Caroline County
Lee Yolton, King William County

Call to Order and Opening Remarks

Chairman Davis called the meeting to order and asked for the calling of the roll. A quorum was declared present. Mr. Davis welcomed Mr. Gregory Evans as the new member of the Board. Mr. Evans is filling the unexpired term of David Bulova who was elected to the House of Delegates.

Mr. Davis introduced DCR Deputy Director Russell Baxter and Division of Chesapeake Bay Local Assistance Director Joan Salvati.

Ms. Salvati introduced V'Lent Lassiter as the new Senior Environmental Planner for the Northern Neck. Ms. Lassiter will assume the responsibilities of Ms. Beth Baldwin who is moving out of state.

Ms. Salvati said that DCR is in the process of extending an offer of employment to another planner.

Ms. Salvati said that there were two bills in the General Assembly relating to the Bay program.

The first deals with perennial flow and would require localities to use the USGS quad sheets for perennial flow determination. As written, the bill would require the designation to extend the entire length of the stream. This bill has been tabled.

The second bill deals with closing the loophole on the silvicultural exemption. The patron withdrew this bill. However, the patron will send a letter to the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services and the Department of Forestry requesting they study the issue to address the concerns such as those raised in Stafford County. Ms. Salvati is a member of the workgroup assigned to study this issue.

Ms. Salvati said that the Department has received a counter proposal from the City of Hampton. The City has offered to reduce their IDA designation by approximately 50%. Staff still has some concerns with the proposal.

Four grants are being prepared for localities to implement buffer restoration projects.

Ms. Salvati called on Ms. Baldwin to discuss two grants to localities for septic pump out.

Ms. Baldwin said that grants have been awarded in the Northern Neck and the Middle Peninsula Planning District to assist localities in the implementation of septic pump out requirements. So far about 50 systems in the Northern Neck and about 20 in the Middle Peninsula have been pumped. The target is approximately 250 systems in each region.

For purposes of clarification, Ms. Salvati reviewed the actions before the Board. Actions are presented for compliance evaluation and for Phase I consistency reviews.

Ms. Salvati said there are two areas of implementation. First localities are required to adopt the Bay ordinances. All 84 localities have now adopted.

Consistency reviews are performed to assess locality compliance with conditions given for the approval of the ordinances and Bay programs.

Mr. Davis suggested at the next Board meeting it would be helpful for staff to again provide continuing education with regard to the issues facing the Board.

Local Program Reviews

Prince William County - Review of Phase I conditions

Ms. Mackey gave the report for Prince William County. She recognized Wade Hugh with the County.

On February 18, 2003 the Board found Prince William County's revised ordinances consistent subject to seven recommendations with a deadline of December 31, 2005. The reason behind the elongated deadline of almost 3 years was the recognition that the anticipated compliance evaluation may include additional ordinance revisions. Staff was attempting to fold the requirements of both compliance efforts into one adoption process.

County staff has worked to address the conditions and draft language has been approved by the County's Planning Commission, however, at this time the proposed revisions to the Design Construction Standards Manual have not been adopted. The Board of County Supervisors is scheduled to act on these and other proposed revisions to the DCSM during March or April. It is staff's opinion that 6 of the 7 recommendations will be addressed once the DCSM revisions are adopted. Board Recommendation #7 relates to the exemption of public utilities and the County has not yet drafted language to address this recommendation.

Ms. Mackey noted that staff would continue to work with the County on this recommendation and that staff recommended a finding of inconsistent with a deadline of June 30, 2006, in an attempt to bring this matter to closure.

Mr. Hugh thanked the Chairman for moving the County up on the agenda for the meeting. He said that County staff was appearing before the Board of Supervisors that afternoon for the purposes of seeking an increase in the stormwater management fee which will in turn help with the educational efforts for the Chesapeake Bay Program.

Mr. Hugh noted that when he appeared before the Board a year ago the hope was that the DCSM revision process was scheduled to take about six months. The process began in January 2005 and is still in process. The DCSM revisions are far more broad than just the changes required by the Board. The County held a public hearing with the Planning Commission regarding the revisions. When the matter was brought before the Board of Supervisors some of the County policy committee team members felt as though some of their opinions were not incorporated into the DCSM document and they asked the Board of Supervisors to delay action on the DCSM.

Mr. Hugh said that, as of now, none of the issues of concern are related to the revisions required by the Chesapeake Bay Local Assistance Board. However, because this is all one document the County would like to deal with all of the issues. He said that the hope was the document would be approved within 4-6 weeks and that would cover most of the outstanding items with regard to the Bay program.

The remaining outstanding issue would be a zoning ordinance change. The County will need to

go through a separate process to make an amendment to the Zoning Ordinance. He noted that the June 30, 2006 date might be difficult, but that the County would move ahead as required.

Mr. Davis asked if the Chesapeake Bay regulations were inside the Zoning Ordinance.

Mr. Hugh said that the Chesapeake Bay Preservation Overlay District is part of the Zoning Ordinance, but the actual details of the County's Chesapeake Bay program are found in the DCSM.

Ms. Salvati clarified that the DCSM was referenced in the County Zoning Ordinance.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find Prince William County's Chesapeake Bay Preservation Area Overlay District Ordinance (Ordinance) and Design Construction Standards Manual (DCSM) to be inconsistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations, and directs Prince William County to undertake and complete the seven (7) recommendations contained in the staff report no later than June 30, 2006.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Prince William County - Review of previous conditions

Ms. Mackey gave the report for the Prince William County Compliance Evaluation.

On September 20, 2004 the Board found that the County's program was not fully compliant and required the County to meet two recommendations by December 31, 2004 and seven recommendations by December 31, 2005. The County met the earlier deadline for the two recommendations, however only one of the seven with a December 2005 deadline had been adequately addressed as of the writing of the staff report.

The six outstanding recommendations require language to be incorporated into the DCSM and the utility standards manual that addresses placement of BMPs in the RPA, protection of the full 100' width of the RPA, buffer mitigation and establishment using vegetative plantings, and conditions for utility exemptions. The County will be adopting DCSM language that addresses three of these recommendations in March or April with the previously mentioned DCSM update. Board Recommendation #1 requires DCSM language revision concerning the full 100' width of the RPA that is not included in the current draft version. Staff will continue to work with the County on this recommendation. Board Recommendation #2 requires the resumption of active

notification of the septic pump-out provisions of the Regulations. The County continues to work with the Health Department to accomplish this requirement. Board Recommendation #5 requires language to be inserted into the utility standards manual regarding conditions for utility exemptions. The County continues to work with the service authority to accomplish this requirement.

Staff finds that, at this time, three of the original nine Board Recommendations have been adequately addressed and recommends that these aspects of the County's implementation of its Phase I program be found consistent with the Act and Regulations. The outstanding six recommendations remain as stated in the staff report with an extended compliance deadline of June 30, 2006.

Mr. Hugh said that again the language was in the DCSM that the County hoped to adopt before June 30. He noted that he had spoken with the planning director regarding the necessary language change provided by DCR staff. He said regarding the septic pump out the County has an updated database from the Health Department. John Meehan with the Health Department has drafted a letter that will go out with the notification of the five-year pump out requirement. The County will mail those to affected individuals by June 30, 2006.

Regarding the utility standards manual, County staff met with the Prince William County Service Authority. A letter has gone out to the engineering community. Their standards manual, like the DCSM, is also only updated on a periodic basis. Mr. Hugh said he needed to determine when that next update was planned. The County will try to get a letter of commitment with regard to the updates.

Mr. Davis requested that staff provide an update at the April 3, 2006 Board meeting.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that certain aspects of Prince William County's implementation of its Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and that Prince William County be directed to undertake and complete the six recommendations contained in the staff report no later than June 30, 2006 and further that staff provide an update to the full Board at the April 3, 2006 Board meeting.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carries unanimously

Town of West Point - Review of Phase I condition

Ms. Miller gave the report for the Town of West Point.

On June 20, 2005, at the Town's request, the Board extended the Town's Phase I consistency deadline from December 31, 2004 to June 30, 2005 for the Town to undertake and complete one recommendation: to adopt a revised CBPA Map. A new map was not adopted by the deadline, and on September 19, 2005 the Board found the Town inconsistent and set a final deadline of September 30, 2005.

The Town Council eventually adopted a revised CBPA Map on November 28, 2005 that designates CBPAs in all of the areas with RPA/RMA features and land types as specified in the Regulations and depicted on the USGS West Point Quadrangle. Based on a review of the amended CBPA Map, staff recommends that the Town's Phase I program be found consistent with the Act and the Regulations.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Town of West Point's Phase I program be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Mathews County - Review of Phase I conditions

Ms. Miller gave the report for Mathews County.

On June 21, 2004 the Board found Mathew County's amended Phase I program consistent subject to the condition that the County address two recommendations by September 30, 2005. The County did not adopt revisions by the deadline, and on December 12, 2005 the Board found the County inconsistent and established a deadline of December 31, 2005 for the County to address the two recommendations.

The first recommendation required that roadways allowed by right in the Resource Protection Area (RPA) be limited to those which meet the conditions specified in the Regulations. The second required that exceptions requesting the location of accessory uses in the RPA be addressed through a formal exception process. On December 20, 2005 the County revised its Chesapeake Bay Preservation Area (CBPA) Overlay District to include, verbatim, the limitations as prescribed in the recommendations.

Staff recommends that Mathews County's amended CBPA Overlay District be found consistent with the Act and the Regulations.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Chesapeake Bay Preservation Area Overlay District amended by Mathews County on December 20, 2005 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

Gloucester County - Review of Phase I conditions

Ms. Miller gave the report for Gloucester County.

Gloucester County revised its Chesapeake Bay Preservation (CBP) Ordinance on December 2, 2003, and on March 22, 2004 the Board found it consistent subject to one condition to be addressed by December 31, 2005. On August 2, 2005 the County revised its CBP Ordinance, adding language to specify the findings that must be made as part of the administrative waiver process. Staff recommends that the County's amended CBP Ordinance be found consistent with the Act and the Regulations.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend to the Chesapeake Bay Local Assistance Board that the Chesapeake Bay Preservation Ordinance amended by Gloucester County on August 2, 2005 be found consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Kilmarnock - Review of previous conditions

Ms. Baldwin gave the report for the Town of Kilmarnock.

On November 21, 2005, the Town of Kilmarnock adopted amendments to its comprehensive plan that addressed the four conditions arising from the initial Board resolution adopted on June 19, 2000.

The first two conditions concerned protecting both the quality and quantity of the Town's water supply. To address these conditions, the Town expanded its discussion of both issues in the Plan, incorporated by reference the Northern Neck Groundwater Management Plan, and adopted a number of strategies to protect its drinking water supply, both from contamination and potential overuse.

The next condition that the Town addressed concerned stream bank erosion although it does not appear to be a significant issue at this time. Nonetheless, the Town incorporated several strategies to reduce the likelihood of erosion and to monitor stream banks where appropriate. This proactive approach should help to prevent erosion from becoming a serious problem within the Town limits.

The final condition to address concerned discussing potential water quality improvements that could be achieved through redevelopment. To address this issue, the Town incorporated several strategies including encouraging the use of Low Impact Development and restoring buffers to a more fully vegetated state on redevelopment projects.

Since the conditions have all been addressed, Ms. Baldwin said it was staff's opinion that the amended Plan be found consistent.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the comprehensive plan amended and adopted by the Town of Kilmarnock on November 21, 2005 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously

Town of Occoquan - Review of Phase I conditions

Ms. Mackey gave the report for the Town of Occoquan.

On September 20, 2004 the Board found the Town of Occoquan's Chesapeake Bay Preservation Overlay District Ordinance consistent with two conditions:

First that the Town include the definition of "substantial alteration" consistent with §9 VAC 10-20-40 of the Regulations, and

Second that they revise the ordinance to include the requirements that a new or expanded water-dependent facility may not conflict with the comprehensive plan and that access to the facility be provided with the minimum disturbance necessary, with only a single point of access where possible, consistent with §9 VAC 10-20-130.1.b (1) and (4) of the Regulations.

The Town made the ordinance changes as requested, therefore staff recommends that the amendments adopted by the Occoquan Town Council on December 14, 2004 be found consistent with the requirements of the Act and Regulations.

MOTION: Mr. Duncanson moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that the Chesapeake Bay Preservation Overlay District Ordinance amended by the Town of Occoquan on December 14, 2004 be found consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

King William County - Review of previous conditions

Ms. Miller gave the report for King William County. She recognized Lee Yolton, Director of Community Development for the County.

On June 21, 2004 the Board found the County's Phase I program not fully compliant with the Act and the Regulations and outlined seven recommendations to be addressed by December 31, 2005. On October 3, 2005, Department staff initiated a review to determine whether the County had adequately addressed the seven conditions. The County has created and/or revised checklists, improved file maintenance, developed and begun recording BMP maintenance agreements, revised the County's CBPA Overlay District to provide alternatives (inspection and filter) for on-site septic system owners to meet the 5-year pump-out requirements, and developed materials needed to conduct a 5-year pump-out notification and enforcement program. These actions have resulted in three of the seven recommendations being adequately addressed.

The remaining four recommendations require implementation of a 5-year septic system pump-out notification/enforcement program, implementation of a BMP tracking and maintenance program, and procurement and review of WQIAs and mitigation plans. Staff recommends that the remaining tasks, especially those associated with the septic system pump-out notification requirement, be undertaken and completed by June 30, 2006.

Mr. Yolton said that King William County has made significant progress on the implementation of the Chesapeake Bay Act. The on site review is appreciated.

The County is in the process of implementing suggestions. The biggest challenge is to implement the septic pump out program. The County does have a draft plan on how to implement the 5-year pump out program. Mr. Yolton said he would take that plan to the Board of Supervisors at their March meeting.

Mr. Yolton said that he anticipates that the County will meet the June deadline.

Mr. Yolton said that the area of concern was with regard to the BMP maintenance and tracking program. The Regulations require BMP maintenance agreements and the County has begun to require and record them. Mr. Yolton advised that inspection follow-ups are a concern for the County, and inquired whether the County must do this.

Ms. Miller clarified that staff was recommending an inspection program, not that the County should conduct an actual maintenance program.

Mr. Yolton asked if County personnel were required to do the inspection.

Mr. Duncanson said that the inspection is the only way to verify.

Mr. Davis said that some localities were allowing private property to supply certification that the site has been inspected. Therefore the locality would not have to physically make the inspection.

Mr. Yolton said that sounded like a workable option and that the agreement could be modified to require periodic reports.

Ms. Salvati said that other counties required the inspection report and did a random sampling of sites, and that this would be acceptable only if random sample inspections were conducted as a part of the County's BMP maintenance monitoring program. Mr. Davis summarized by requesting that the County work with Ms. Miller to resolve the issue by implementing the suggested strategies in combination.

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MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that implementation of certain aspects of King William County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and further that the County be directed to undertake and complete the four recommendations contained in the staff report no later than June 30, 2006.

SECOND: Mr. Duncanson

DISCUSSION: None

REVISED: 9/20/2006 10:35 AM

VOTE: Motion carried unanimously

Caroline County - Review of previous conditions

Ms. Smith gave the report for Caroline County. She recognized Angeline Marsh, County Planner.

Caroline County underwent a compliance evaluation in late 2004, with the Board establishing a compliance deadline of December 31, 2005 to address 6 conditions. It is staff's opinion that the County has addressed 4 of the 6 conditions: they now require the submission of a WQIA for all RPA disturbances; they ensure that the limits of the RPA are shown on plans and plats and that stormwater management calculations and BMPs are consistent with the Virginia Stormwater Management Handbook; and, they have addressed the issue of the use of natural wetlands for BMP locations.

Two conditions have not been fully addressed. These relate to the septic pump-out and BMP maintenance programs. For the pump-out program, the County has completed development of a database but has not yet set up its program to send out notices. For BMP maintenance, the County has also established a database for BMP information, but has not initiated a program for BMP inspection and maintenance. Both of these conditions remain, and staff recommends that a new deadline of September 30, 2006 be set for these to be met.

Ms. Marsh said that the County was comfortable with the September date. She noted that the County was beginning the interview process for the vacant positions.

Mr. Sheffield asked when the County had finalized the database information.

Ms. Marsh said that the database was finalized in the fall and that the County anticipated phasing in the notifications.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that implementation of certain aspects of Caroline County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and that the County be directed to undertake and complete the two recommendations contained in the staff report no later than September 30, 2006 and further that a progress report be provided at the Board's summer meeting.

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously

REVISED: 9/20/2006 10:35 AM

Northumberland County - Review of previous conditions

Ms. Baldwin gave the report for Northumberland County.

Northumberland County's initial compliance evaluation was conducted during the first few months of 2004 and during the course of the evaluation, staff identified several aspects where implementation of the County's Bay Act program did not appear to fully comply with the Act and Regulations. On September 20, 2004, the Board adopted a resolution that required the County to undertake and complete nine recommendations by September 30, 2005.

Most of the conditions concerned RPA development criteria and the County has adequately addressed them. There are two outstanding conditions that the County has not fully addressed at this time. The first concerns requiring BMP maintenance agreements and developing a means to ensure routine inspection of BMPs into the future. The second condition concerns initiating the septic pump-out notification program.

The County intends to meet both requirements well before the proposed deadline of September 30, 2006. As of yesterday, the County emailed a copy of its proposed BMP maintenance agreement, septic system cover letter and septic notification/verification form. Furthermore, in discussions with the Zoning Administrator, it is the County's intention to send the first group of notification letters to its residents by July 31, 2006.

The County has made significant strides towards meeting all nine conditions and is well situated to address the remaining conditions by the proposed deadline of September 30, 2006. For this reason, staff recommends that the Board find that certain aspects of Northumberland County's Phase I program implementation do not fully comply with the Act and Regulations, and directs Northumberland County to undertake and complete the two recommendations contained in this staff report no later than September 30, 2006.

MOTION: Mr. Sheffield moved that the Northern Area Review Committee recommend that the Chesapeake Bay Local Assistance Board find that implementation of certain aspects of Northumberland County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ VAC 10-20-231 and 250 of the Regulations, and that Northumberland County be directed to undertake and complete the two recommendations contained in the staff report no later than September 30, 2006.

SECOND: Mr. Evans

DISCUSSION: None

VOTE: Motion carried unanimously

REVISED: 9/20/2006 10:35 AM

Other Business

Mr. Davis suggested that a Policy Committee meeting be scheduled in conjunction with the full Board meeting on April 3.

Mr. Sheffield said that he might not be able to make the April 3 meeting. Staff will follow up with regard to a Policy Committee meeting.

Public Comment

Mr. Sheffield asked about the status of the marina issue. He noted that he had been contacted by some of the marina owners who still expressed concern about the rules with regard to what could be constructed within the boundary lines.

Ms. Smith said that the regulations were clear with regard to what constituted water dependent facilities which cannot exist outside the RPA. She noted that a bathhouse or restaurant were ancillary to a marina, but were not water dependent. She said that the regulations make a distinction between water dependent components and non water-dependent components of water dependent facilities.

Mr. Davis said that the problem for existing marinas was that it was difficult to obtain an exception.

Ms. Smith said the issue often needs to be dealt with on a case-by-case basis.

Ms. Salvati said that staff has template WQIA forms that would be beneficial for someone going through the exception process.

Mr. Davis said that he would encourage the group to continue this discussion and to continue to try to educate marina owners. He noted that typically the burden would be on the applicant.

Ms. Smith said it would be helpful to hear from marina owners about specific situations they have faced with regard to what additional facilities they have or have not been able to develop at their sites. She noted that such details would enable the Board to develop a policy better aimed at addressing the specific issue rather than develop a general policy that may not address the issue at hand.

Mr. Davis asked that staff provide a legislative update at the next full Board meeting.

Mr. Sheffield said that the City of Fredericksburg owns 4,200 acres along the Rapidan and Rappahannock Rivers that was initially designated for use in the now abandoned Salem Dam

Project. The City Council and several members are anxious to control growth and prevent further river crossings. Part of what is being proposed is that the City convey a perpetual easement of these lands to the Virginia Outdoors Foundation, DGIF and The Nature Conservancy in return for which \$1.6 million would come in to fund a river stewardship program.

The City has tried to get the Counties to cooperate with that, however the Counties do not wish to cooperate. The controversy is the conveyance of public property to the Nature Conservancy.

Ms. Salvati noted that the Spotsylvania County program compliance evaluation was scheduled to be on the agenda for this meeting but staff needed information from the Division of Soil and Water with regard to the stormwater management program.

Ms. Salvati said that staff is making progress with regard to the City of Hampton. She noted that she met with representatives from the Planning Department. She said that she would have further discussions with Board members with regard to this issue.

Adjourn

Being no further business, the meeting was adjourned.

Respectfully submitted,

Donald W. Davis
Chair

Joseph H. Maroon
Director